

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE SEVENTH DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MS JUSTICE G.ROHINI

WRIT PETITION NO : 4258 of 2005

Between:

Indira Seva Sadan Trust, HIG-B6-F1 Bagh Lingampally, Hyderabad
rep by its Managing Trustee S.Vishwanatham S/o. Late Jangaiah
R/o.Bagh Lingampally, Hyderabad.

... PETITIONER

AND

- 1 The Municipal Corporation of Hyderabad represented by its Commissioner,
Tank Bund Road, Hyderabad.
- 2 The District Collector, Hyderabad District.
- 3 The Principal Secretary, Government of Andhra Pradesh Revenue
Department Secretariat Buildings, Hyderabad.

...RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ, of "Mandamus" declaring the action of the 1st respondent in not receiving or considering the application of the petitioner seeking building permission in respect of the petitioner's property admeasuring Ac.1.00 of Land in Sy.No.180 situated at Saidabad, Hyderabad by insisting on the production of a 'no objection Certificate' from the District Collector, Hyderabad as being illegal, arbitrary, unconstitutional and contrary to law declared by this Hon'ble Court and consequently direct the 1st respondent to receive, consider and process the petitioner application for construction in the said plot without insisting on a no objection certificate from the 2nd respondent and issue sanction for the construction of the building in the said premises.

Counsel for the Petitioner: MR.S.NIRANJAN REDDY

Counsel for the Respondent No.1: MR.RAMA RAO GHANTA

Counsel for the Respondents 2 & 3: G.P. FOR REVENUE

The Court at the stage of admission made the following:

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ORDER:

This writ petition is filed seeking a writ of Mandamus declaring the alleged action of the first respondent in not receiving the application of the petitioner seeking building permission in respect of the petitioner's property admeasuring Ac.1.00 of land in Sy.No.180 situated at Saidabad, Hyderabad, by insisting on the production of no objection certificate from the District Collector, Hyderabad, is arbitrary and illegal.

Learned counsel for the petitioner states that the issue involved in this writ petition is squarely covered by the decision of this Court in ***HYDERABAD POTTERIES PRIVATE LIMITED v. DISTRICT COLLECTOR, HYDERABAD***¹ wherein it has been held as under.

“The Commissioner is required to make pragmatic assessment of the material available on record and decide the question of prima facie title and lawful possession of the applicants. The applications for grant of permission cannot be rejected solely on the basis of TSLR entries. After all, the decision to grant permission itself would not confer any title upon the applicant, nor it would take away the rights of the objection(s) whether the Government or any individual, for asserting their right, title and interest in the land in respect of which permission has been granted and dispute the title in any manner known to law. Similarly, the Commissioner is not entitled to decide any dispute questions of title or the ownership. All that the Commissioner required to do is to find out prima facie title and lawful possession of the applicant and obviously such consideration is confined to only for the purpose of granting permission and nothing more.”

The learned counsel also states that the Writ Appeal No.1096 of 2001 filed against the said decision was disposed of by the Division Bench observing that the Commissioner while acting under Section 429 (1) (a) of the Hyderabad Municipal Corporation Act, read with relevant building bylaws acts as a statutory authority and required to make decision on relevant material and facts and it is not legally permissible for such authority to base its decisions only on one piece of relevant material and to exclude other relevant material.

The learned standing counsel appearing for the first respondent-Corporation does not dispute the above legal position. Accordingly following the said decisions, the writ petition is disposed of with a direction to the respondents to consider the application of the petitioner in the light of the above decisions and pass appropriate orders, in accordance with law.

The writ petition is accordingly disposed of. No order as to costs.

G. ROHINI, J

Dated: 07-03-2005

LSK

ASSISTANT REGISTRAR

To

- 1 The Commissioner, Municipal Corporation of Hyderabad,
Tank Bund Road, Hyderabad.
- 2 The District Collector, Hyderabad District.
- 3 The Principal Secretary to Government of Andhra Pradesh,
Revenue Department Secretariat Buildings, Hyderabad.
- 4 Two C.Cs. to the G.P. for Revenue, High Court Buildings,
Hyderabad. (O.U.T.)
- 5 Two C.D. copies.